

ORDER DENYING MOTION TO PROCEED IN FORMA PAUPERIS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE RAMIREZ,)	No. C 14-3026 RMW (PR)
)	
Petitioner,)	ORDER DENYING MOTION TO
)	PROCEED IN FORMA
v.)	PAUPERIS; ORDER TO SHOW
)	CAUSE; ORDER DENYING
S. FRAVENHEIN, Warden,)	MOTION FOR APPOINTMENT
)	OF COUNSEL
Respondent.)	
_____)	

Petitioner, a state prisoner proceeding pro se, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Based on the Certificate of Funds submitted by petitioner, the motion for leave to proceed in forma pauperis is DENIED. Petitioner must pay the \$5.00 filing fee within **twenty-eight (28) days** of the date of this order or face dismissal of this action for failure to pay the filing fee. The court orders respondent to show cause why a writ of habeas corpus should not be granted.

BACKGROUND

According to the petition, petitioner was convicted in San Mateo County Superior Court of charges of two counts of simple kidnapping and two counts of rape. Petitioner was sentenced to two consecutive terms of 15 years to life. Petitioner unsuccessfully appealed his convictions to the California Court of Appeal and the California Supreme Court, and filed the underlying petition on July 2, 2014.

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

A district court shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

B. Petitioner’s Claims

As grounds for federal habeas relief, petitioner alleges that: (1) the trial court violated petitioner’s rights by limiting defense counsel’s argument to the jury, and (2) there was insufficient evidence to support one of the two convictions of simple kidnapping . Liberally construed, the court orders respondent to show cause why the petition should not be granted.

C. Motion for Appointment of Counsel

Plaintiff’s motion for appointment of counsel is DENIED for want of exceptional circumstances. See Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997); see also Lassiter v. Dep’t of Social Services, 452 U.S. 18, 25 (1981) (there is no constitutional right to counsel in a civil case). This denial is without prejudice to the court’s sua sponte appointment of counsel at a future date should the circumstances of this case warrant such appointment.

CONCLUSION

1. Petitioner’s motion for leave to proceed in forma pauperis is DENIED. Petitioner shall pay the \$5.00 filing fee within twenty-eight days of the filing date of this order. Petitioner is warned that failure to pay the filing fee within the time required will result in dismissal of this action without further notice.

2. Petitioner’s motion for appointment of counsel is DENIED without prejudice.

3. The clerk shall serve by mail a copy of this order and the petition and all

1 attachments thereto upon the respondent and the respondent's attorney, the Attorney General of
 2 the State of California. The clerk shall also serve a copy of this order on the petitioner.

3 4. Respondent shall file with the court and serve on petitioner, within **sixty days** of
 4 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing
 5 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.

6 Respondent shall file with the answer and serve on petitioner a copy of all portions of the
 7 underlying state criminal record that have been transcribed previously and that are relevant to a
 8 determination of the issues presented by the petition.

9 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
 10 court and serving it on respondent within **thirty days** of the date the answer is filed.

11 5. Respondent may file a motion to dismiss on procedural grounds in lieu of an
 12 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
 13 2254 Cases within **sixty days** of the date this order is filed. If respondent files such a motion,
 14 petitioner shall file with the court and serve on respondent an opposition or statement of non-
 15 opposition within **twenty-eight days** of the date the motion is filed, and respondent **shall** file
 16 with the court and serve on petitioner a reply within **fourteen days** of the date any opposition is
 17 filed.

18 6. It is petitioner's responsibility to prosecute this case. Petitioner is reminded that
 19 all communications with the court must be served on respondent by mailing a true copy of the
 20 document to respondent's counsel. Petitioner must keep the court and all parties informed of any
 21 change of address by filing a separate paper captioned "Notice of Change of Address." He must
 22 comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal
 23 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

24 IT IS SO ORDERED.

25 DATED: JDEI


 RONALD M. WHYTE
 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSE RAMIREZ,

Plaintiff,

v.

S. FRAVENHEIN, et al,

Defendant.

Case Number: CV14-03026 RMW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 1, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jose Ramirez AK-9279
Pleasant Valley State Prison
P.O. Box 8500
Coalinga, CA 93210

Dated: October 1, 2014

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk